

SENATE SUBSTITUTE

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HOUSE BILL NO. 1566

AN ACT

2 To repeal section 208.215, RSMo, and to enact
3 in lieu thereof three new sections relating
4 to medical assistance cost containment within
5 the Medicaid program.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
7 AS FOLLOWS:

8 Section A. Section 208.215, RSMo, is repealed and three new
9 sections enacted in lieu thereof, to be known as sections
10 208.147, 208.212, and 208.215, to read as follows:

11 208.147. 1. The department shall conduct an annual income
12 and eligibility verification review of each recipient of medical
13 assistance. Such review shall be completed not later than twelve
14 months after the recipient's last eligibility determination.

15 2. The annual eligibility review requirement may be
16 satisfied by the completion of a periodic food stamp

1 redetermination for the household.

2 3. (1) The department shall require recipients to provide
3 documentation for income verification for purposes of the
4 eligibility review described in subsection 1 of this section.
5 Such documentation may include, but not be limited to:

6 (a) Current wage stubs;

7 (b) A current W-2 form;

8 (c) Statements from the recipient's employer; and

9 (d) A wage match with the division of employment security.

10 (2) The family support division may also verify information
11 through inquiry into the personal property and driver's licensing
12 systems of the department of revenue, or through other data
13 matches.

14 4. The department shall by rule establish procedures that
15 require applicants or recipients to disclose at the time of
16 application or the annual eligibility review whether their
17 employer offers employer-sponsored health insurance that they are
18 eligible to receive, whether the applicant or recipient
19 participates in the employer-sponsored health insurance program,
20 and to disclose the applicant's or recipient's reason for not
21 participating in the employer-sponsored plan, if applicable.

22 5. The department shall establish by rule procedures that
23 require any applicant or recipient who is employable but who is
24 unemployed at the time of application or the annual eligibility
25 review, to disclose whether they have sought employment.

1 6. Any rule or portion of a rule, as that term is defined
2 in section 536.010, RSMo, that is created under the authority
3 delegated in this section shall become effective only if it
4 complies with and is subject to all of the provisions of chapter
5 536, RSMo, and, if applicable, section 536.028, RSMo. This
6 section and chapter 536, RSMo, are nonseverable and if any of the
7 powers vested with the general assembly pursuant to chapter 536,
8 RSMo, to review, to delay the effective date, or to disapprove or
9 annul a rule are subsequently held unconstitutional, then the
10 grant of rulemaking authority and any rule proposed or adopted
11 after August 28, 2004, shall be invalid and void.

12 208.212. 1. For purposes of Medicaid eligibility,
13 investment in annuities shall be limited to those annuities that:

14 (1) Are actuarially sound as measured against the Social
15 Security Administration Life Expectancy Tables, as amended;

16 (2) Provide equal or nearly equal payments for the duration
17 of the device and which exclude "balloon" style final payments;
18 and

19 (3) Provide the state of Missouri secondary or contingent
20 beneficiary status ensuring payment if the individual predeceases
21 the duration of the annuity, in an amount equal to the Medicaid
22 expenditure made by the state on the individual's behalf.

23 2. The department shall establish a thirty-six month look-
24 back period to review any investment in an annuity by an
25 applicant for Medicaid benefits. If an investment in an annuity

1 is determined by the department to have been made in anticipation
2 of obtaining or with an intent to obtain eligibility for Medicaid
3 benefits, the department shall have available all remedies and
4 sanctions permitted under federal and state law regarding such
5 investment. The fact that an investment in an annuity which
6 occurred prior to the effective date of this section does not
7 meet the criteria established in subsection 1 of this section
8 shall not automatically result in a disallowance of such
9 investment.

10 3. The department of social services shall promulgate rules
11 to administer the provisions of this section. Any rule or
12 portion of a rule, as that term is defined in section 536.010,
13 RSMo, that is created under the authority delegated in this
14 section shall become effective only if it complies with and is
15 subject to all of the provisions of chapter 536, RSMo, and, if
16 applicable, section 536.028, RSMo. This section and chapter 536,
17 RSMo, are nonseverable and if any of the powers vested with the
18 general assembly pursuant to chapter 536, RSMo, to review, to
19 delay the effective date, or to disapprove and annul a rule are
20 subsequently held unconstitutional, then the grant of rulemaking
21 authority and any rule proposed or adopted after August 28, 2004,
22 shall be invalid and void.

23 208.215. 1. Medicaid is payer of last resort unless
24 otherwise specified by law. When any person, corporation,
25 institution, public agency or private agency is liable, either

1 pursuant to contract or otherwise, to a recipient of public
2 assistance on account of personal injury to or disability or
3 disease or benefits arising from a health insurance plan to which
4 the recipient may be entitled, payments made by the department of
5 social services shall be a debt due the state and recoverable
6 from the liable party or recipient for all payments made in
7 behalf of the recipient and the debt due the state shall not
8 exceed the payments made from medical assistance provided under
9 sections 208.151 to 208.158 and section 208.162 and section
10 208.204 on behalf of the recipient, minor or estate for payments
11 on account of the injury, disease, or disability or benefits
12 arising from a health insurance program to which the recipient
13 may be entitled.

14 2. The department of social services may maintain an
15 appropriate action to recover funds due under this section in the
16 name of the state of Missouri against the person, corporation,
17 institution, public agency, or private agency liable to the
18 recipient, minor or estate.

19 3. Any recipient, minor, guardian, conservator, personal
20 representative, estate, including persons entitled under section
21 537.080, RSMo, to bring an action for wrongful death who pursues
22 legal rights against a person, corporation, institution, public
23 agency, or private agency liable to that recipient or minor for
24 injuries, disease or disability or benefits arising from a health
25 insurance plan to which the recipient may be entitled as outlined

1 in subsection 1 of this section shall upon actual knowledge that
2 the department of social services has paid medical assistance
3 benefits as defined by this chapter, promptly notify the
4 department as to the pursuit of such legal rights.

5 4. Every applicant or recipient by application assigns his
6 right to the department of any funds recovered or expected to be
7 recovered to the extent provided for in this section. All
8 applicants and recipients, including a person authorized by the
9 probate code, shall cooperate with the department of social
10 services in identifying and providing information to assist the
11 state in pursuing any third party who may be liable to pay for
12 care and services available under the state's plan for medical
13 assistance as provided in sections 208.151 to 208.159 and
14 sections 208.162 and 208.204. All applicants and recipients
15 shall cooperate with the agency in obtaining third-party
16 resources due to the applicant, recipient, or child for whom
17 assistance is claimed. Failure to cooperate without good cause
18 as determined by the department of social services in accordance
19 with federally prescribed standards, shall render the applicant
20 or recipient ineligible for medical assistance under sections
21 208.151 to 208.159 and sections 208.162 and 208.204.

22 5. Every person, corporation or partnership who acts for or
23 on behalf of a person who is or was eligible for medical
24 assistance under sections 208.151 to 208.159 and sections 208.162
25 and 208.204 for purposes of pursuing the applicant's or

1 recipient's claim which accrued as a result of a nonoccupational
2 or nonwork-related incident or occurrence resulting in the
3 payment of medical assistance benefits shall notify the
4 department upon agreeing to assist such person and further shall
5 notify the department of any institution of a proceeding,
6 settlement or the results of the pursuit of the claim and give
7 thirty days' notice before any judgment, award, or settlement may
8 be satisfied in any action or any claim by the applicant or
9 recipient to recover damages for such injuries, disease, or
10 disability, or benefits arising from a health insurance program
11 to which the recipient may be entitled.

12 6. Every recipient, minor, guardian, conservator, personal
13 representative, estate, including persons entitled under section
14 537.080, RSMo, to bring an action for wrongful death, or his
15 attorney or legal representative shall promptly notify the
16 department of any recovery from a third party and shall
17 immediately reimburse the department from the proceeds of any
18 settlement, judgment, or other recovery in any action or claim
19 initiated against any such third party.

20 7. The department director shall have a right to recover
21 the amount of payments made to a provider under this chapter
22 because of an injury, disease, or disability, or benefits arising
23 from a health insurance plan to which the recipient may be
24 entitled for which a third party is or may be liable in contract,
25 tort or otherwise under law or equity.

1 8. The department of social services shall have a lien upon
2 any moneys to be paid by any insurance company or similar
3 business enterprise, person, corporation, institution, public
4 agency or private agency in settlement or satisfaction of a
5 judgment on any claim for injuries or disability or disease
6 benefits arising from a health insurance program to which the
7 recipient may be entitled which resulted in medical expenses for
8 which the department made payment. This lien shall also be
9 applicable to any moneys which may come into the possession of
10 any attorney who is handling the claim for injuries, or
11 disability or disease or benefits arising from a health insurance
12 plan to which the recipient may be entitled which resulted in
13 payments made by the department. In each case, a lien notice
14 shall be served by certified mail or registered mail, upon the
15 party or parties against whom the applicant or recipient has a
16 claim, demand or cause of action. The lien shall claim the
17 charge and describe the interest the department has in the claim,
18 demand or cause of action. The lien shall attach to any verdict
19 or judgment entered and to any money or property which may be
20 recovered on account of such claim, demand, cause of action or
21 suit from and after the time of the service of the notice.

22 9. On petition filed by the department, or by the
23 recipient, or by the defendant, the court, on written notice of
24 all interested parties, may adjudicate the rights of the parties
25 and enforce the charge. The court may approve the settlement of

1 any claim, demand or cause of action either before or after a
2 verdict, and nothing in this section shall be construed as
3 requiring the actual trial or final adjudication of any claim,
4 demand or cause of action upon which the department has charge.
5 The court may determine what portion of the recovery shall be
6 paid to the department against the recovery. In making this
7 determination the court shall conduct an evidentiary hearing and
8 shall consider competent evidence pertaining to the following
9 matters:

10 (1) The amount of the charge sought to be enforced against
11 the recovery when expressed as a percentage of the gross amount
12 of the recovery; the amount of the charge sought to be enforced
13 against the recovery when expressed as a percentage of the amount
14 obtained by subtracting from the gross amount of the recovery the
15 total attorney's fees and other costs incurred by the recipient
16 incident to the recovery; and whether the department should, as a
17 matter of fairness and equity, bear its proportionate share of
18 the fees and costs incurred to generate the recovery from which
19 the charge is sought to be satisfied;

20 (2) The amount, if any, of the attorney's fees and other
21 costs incurred by the recipient incident to the recovery and paid
22 by the recipient up to the time of recovery, and the amount of
23 such fees and costs remaining unpaid at the time of recovery;

24 (3) The total hospital, doctor and other medical expenses
25 incurred for care and treatment of the injury to the date of

1 recovery therefor, the portion of such expenses theretofore paid
2 by the recipient, by insurance provided by the recipient, and by
3 the department, and the amount of such previously incurred
4 expenses which remain unpaid at the time of recovery and by whom
5 such incurred, unpaid expenses are to be paid;

6 (4) Whether the recovery represents less than substantially
7 full recompense for the injury and the hospital, doctor and other
8 medical expenses incurred to the date of recovery for the care
9 and treatment of the injury, so that reduction of the charge
10 sought to be enforced against the recovery would not likely
11 result in a double recovery or unjust enrichment to the
12 recipient;

13 (5) The age of the recipient and of persons dependent for
14 support upon the recipient, the nature and permanency of the
15 recipient's injuries as they affect not only the future
16 employability and education of the recipient but also the
17 reasonably necessary and foreseeable future material,
18 maintenance, medical rehabilitative and training needs of the
19 recipient, the cost of such reasonably necessary and foreseeable
20 future needs, and the resources available to meet such needs and
21 pay such costs;

22 (6) The realistic ability of the recipient to repay in
23 whole or in part the charge sought to be enforced against the
24 recovery when judged in light of the factors enumerated above.

25 10. The burden of producing evidence sufficient to support

1 the exercise by the court of its discretion to reduce the amount
2 of a proven charge sought to be enforced against the recovery
3 shall rest with the party seeking such reduction.

4 11. The court may reduce and apportion the department's
5 lien proportionate to the recovery of the claimant. The court
6 may consider the nature and extent of the injury, economic and
7 noneconomic loss, settlement offers, comparative negligence as it
8 applies to the case at hand, hospital costs, physician costs, and
9 all other appropriate costs. The department shall pay its pro
10 rata share of the attorney's fees based on the department's lien
11 as it compares to the total settlement agreed upon. This section
12 shall not affect the priority of an attorney's lien under section
13 484.140, RSMo. The charges of the department described in this
14 section, however, shall take priority over all other liens and
15 charges existing under the laws of the state of Missouri with the
16 exception of the attorney's lien under such statute.

17 12. Whenever the department of social services has a
18 statutory charge under this section against a recovery for
19 damages incurred by a recipient because of its advancement of any
20 assistance, such charge shall not be satisfied out of any
21 recovery until the attorney's claim for fees is satisfied,
22 irrespective of whether or not an action based on recipient's
23 claim has been filed in court. Nothing herein shall prohibit the
24 director from entering into a compromise agreement with any
25 recipient, after consideration of the factors in subsections 9 to

1 13 of this section.

2 13. This section shall be inapplicable to any claim, demand
3 or cause of action arising under the workers' compensation act,
4 chapter 287, RSMo. From funds recovered pursuant to this section
5 the federal government shall be paid a portion thereof equal to
6 the proportionate part originally provided by the federal
7 government to pay for medical assistance to the recipient or
8 minor involved. The department shall [have the right to] enforce
9 TEFRA liens, 42 U.S.C. Section 1396p, as authorized by federal
10 law and regulation on permanently institutionalized individuals.
11 The department shall have the right to enforce TEFRA liens, 42
12 U.S.C. Section 1396p, as authorized by federal law and regulation
13 on all other institutionalized individuals.. For the purposes of
14 this subsection, "permanently institutionalized individuals"
15 means those persons who the department determines cannot
16 reasonably be expected to be discharged and return home, and
17 "property" includes the homestead and all other personal and real
18 property in which the recipient has sole legal interest or a
19 legal interest based upon co-ownership of the property which is
20 the result of a transfer of property for less than the fair
21 market value within thirty months prior to the recipient's
22 entering the nursing facility. The following provisions shall
23 apply to such liens:

24 (1) The lien shall be for the debt due the state for
25 medical assistance paid or to be paid on behalf of a recipient.

1 The amount of the lien shall be for the full amount due the state
2 at the time the lien is enforced;

3 (2) The director of the department or the director's
4 designee shall file for record, with the recorder of deeds of the
5 county in which any real property of the recipient is situated, a
6 written notice of the lien. The notice of lien shall contain the
7 name of the recipient and a description of the real estate. The
8 recorder shall note the time of receiving such notice, and shall
9 record and index the notice of lien in the same manner as deeds
10 of real estate are required to be recorded and indexed. The
11 director or the director's designee may release or discharge all
12 or part of the lien and notice of the release shall also be filed
13 with the recorder;

14 (3) No such lien may be imposed against the property of any
15 individual prior to his death on account of medical assistance
16 paid except:

17 (a) In the case of the real property of an individual:

18 a. Who is an inpatient in a nursing facility, intermediate
19 care facility for the mentally retarded, or other medical
20 institution, if such individual is required, as a condition of
21 receiving services in such institution, to spend for costs of
22 medical care all but a minimal amount of his income required for
23 personal needs; and

24 b. With respect to whom the director of the department of
25 social services or the director's designee determines, after

1 notice and opportunity for hearing, that he cannot reasonably be
2 expected to be discharged from the medical institution and to
3 return home. The hearing, if requested, shall proceed under the
4 provisions of chapter 536, RSMo, before a hearing officer
5 designated by the director of the department of social services;
6 or

7 (b) Pursuant to the judgment of a court on account of
8 benefits incorrectly paid on behalf of such individual;

9 (4) No lien may be imposed under paragraph (b) of
10 subdivision (3) of this subsection on such individual's home if
11 one or more of the following persons is lawfully residing in such
12 home:

13 (a) The spouse of such individual;

14 (b) Such individual's child who is under twenty-one years
15 of age, or is blind or permanently and totally disabled; or

16 (c) A sibling of such individual who has an equity interest
17 in such home and who was residing in such individual's home for a
18 period of at least one year immediately before the date of the
19 individual's admission to the medical institution;

20 (5) Any lien imposed with respect to an individual pursuant
21 to subparagraph b of paragraph (a) of subdivision (3) of this
22 subsection shall dissolve upon that individual's discharge from
23 the medical institution and return home.

24 14. The debt due the state provided by this section is
25 subordinate to the lien provided by section 484.130, RSMo, or

1 section 484.140, RSMo, relating to an attorney's lien and to the
2 recipient's expenses of the claim against the third party.

3 15. Application for and acceptance of medical assistance
4 under this chapter shall constitute an assignment to the
5 department of social services of any rights to support for the
6 purpose of medical care as determined by a court or
7 administrative order and of any other rights to payment for
8 medical care.

9 16. All recipients of benefits as defined in this chapter
10 shall cooperate with the state by reporting to the division of
11 family services or the division of medical services, within
12 thirty days, any occurrences where an injury to their persons or
13 to a member of a household who receives medical assistance is
14 sustained, on such form or forms as provided by the division of
15 family services or the division of medical services.

16 17. If a person fails to comply with the provision of any
17 judicial or administrative decree or temporary order requiring
18 that person to maintain medical insurance on or be responsible
19 for medical expenses for a dependent child, spouse, or ex-spouse,
20 in addition to other remedies available, that person shall be
21 liable to the state for the entire cost of the medical care
22 provided pursuant to eligibility under any public assistance
23 program on behalf of that dependent child, spouse, or ex-spouse
24 during the period for which the required medical care was
25 provided. Where a duty of support exists and no judicial or

1 administrative decree or temporary order for support has been
2 entered, the person owing the duty of support shall be liable to
3 the state for the entire cost of the medical care provided on
4 behalf of the dependent child or spouse to whom the duty of
5 support is owed.

6 18. The department director or his designee may compromise,
7 settle or waive any such claim in whole or in part in the
8 interest of the medical assistance program.